

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

May 5, 1999

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. §1324a Proceeding
)	OCAHO Case no. 98A00089
SHARIF DESIGNS LTD,)	
Respondent.)	
_____)	

FINAL DECISION AND ORDER

Appearances: Patricia A. Gannon, Esquire
Immigration and Naturalization Service for complainant

Michael S. Amend, Vice President
Sharif Designs LTD for respondent

Before: Honorable Joseph E. McGuire

On September 3, 1998, complainant, acting by and through the Immigration and Naturalization Service (INS or complainant), commenced this action, which arises under the Immigration Reform and Control Act of 1986 (IRCA), as amended, 8 U.S.C. § 1324a, by having filed a four-count Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO).

That initiating pleading contained 15 alleged IRCA illegal hire and paperwork violations, for which civil money penalties totaling \$8,200 had been assessed.

Count I alleged that Sharif Designs LTD (Sharif Designs or respondent) violated the provisions of 8 U.S.C. § 1324a(a)(1)(A) by having knowingly hired two aliens not authorized to work in the United States and doing so after November 6, 1986. For each of these alleged infractions, INS assessed a civil money penalty of \$910, or a total of \$1,820.

In Count II it was alleged that Sharif Designs had also violated the provisions of 8 U.S.C. § 1324a(a)(1)(B) by having failed to ensure that the two named employees properly completed

Section 1 of the Employment Eligibility Forms (Forms I-9) and that Sharif Designs also failed to properly complete Section 2 of those forms. For those paperwork infractions, INS levied civil money penalties totaling \$1,000, or \$500 for each of the alleged violations.

INS alleged in Count III that Sharif Designs again violated section 1324a(a)(1)(B) by having failed to properly complete Section 2 of the Forms I-9 for each of the 10 named employees and assessed a \$490 civil money penalty for each of those infractions, or a total of \$4,900 for that count.

INS alleged in Count IV that Sharif Designs further violated section 1324a(1)(B) by having failed to ensure that one employee properly completed Section 1 of her Form I-9 and assessed a civil money penalty of \$480 for that alleged violation.

On December 4, 1998, Sharif Designs filed a letter pleading-type answer to the Complaint.

On January 27, 1999, INS filed a Motion for Summary Decision requesting that all alleged facts of violation in the four-count Complaint at issue be resolved in its favor. In an order issued on February 5, 1999, summary decision was granted as to liability relating to the 13 paperwork violations alleged in Counts II, III, and IV. Summary decision was denied as to liability on the two alleged illegal hire violations in Count I since INS failed to satisfy the element of knowledge by Sharif Designs that it hired and/or continued to employ aliens who were unauthorized for employment in the United States.

On February 18, 1999, INS filed a Second Motion for Summary Decision concerning the alleged facts of violation in the two remaining illegal hire charges in Count I based upon a sworn declaration of INS Special Agent Jeffrey Knopf and other documentary evidence. That motion was denied in an order issued by the undersigned on March 9, 1999.

On May 3, 1999, the parties jointly filed a Motion to Dismiss accompanied by a Settlement Agreement, which resolves all matters in controversy.

Under the pertinent rule of OCAHO Rules of Practice and Procedure, 64 Fed. Reg. 7066, 7075 (1999) (to be codified at 28 C.F.R. § 68.14),¹ where the parties have submitted a settlement agreement containing consent findings and a proposed decision and order, the administrative law judge may, if satisfied with its timeliness, form and substance, accept such an agreement by

¹Portions of the Rules of Practice and Procedure for Administrative Hearings, codified at Part 68 of Title 28 of the Code of Federal Regulations, have been amended by the interim rule of February 12, 1999. Citation to the amended portions of Part 68 are to the interim rule published in the Federal Register, 64 Fed. Reg. 7066 (1999). Citation to the portions of Part 68 which were not affected by the interim rule are to the most recent volume of the Code of Federal Regulations, 28 C.F.R. Part 68 (1998).

issuing a decision and order based upon the agreed findings.

It is found that the terms of the Settlement Agreement comply with the applicable regulations and are appropriate in timeliness, form, and substance pursuant to the provisions of the pertinent procedural rule. It is further found, under the terms of the Settlement Agreement and pursuant to the provisions of that procedural rule, that:

1. Sharif Designs has withdrawn its request for a hearing on the merits;
2. Sharif Designs understands that the 15 allegations set forth in Counts I through IV of the Complaint will be deemed to be first offenses of section 1324a and agrees to pay civil money penalties in the total amount of \$3,000 in full satisfaction of the Final Order and of all claims set forth in the Complaint;
3. Sharif Designs understands that the acknowledged 15 allegations contained in Counts I through IV of the Complaint constitute first offenses and that any future violations of the provisions of 8 U.S.C. § 1324a by Sharif Designs will be treated as subsequent offenses for the purpose of assessing enhanced penalties;
4. Sharif Designs agrees to cease and desist from any violations of 8 U.S.C. § 1324a;
5. The parties have waived any further procedural steps before the administrative law judge;
6. Each party shall bear its own costs and attorney's fees and any other expenses each has incurred in this action;
7. The parties have waived any right to challenge or contest the validity of this Final Decision and Order;
8. The entire record on which this Final Decision and Order is based consists solely of the Complaint, the Notice of Hearing, and the Settlement Agreement, which are incorporated herein by reference;
9. This Final Decision and Order shall have the same force and effect as if this ruling had been issued following a full administrative hearing.

Order

The Settlement Agreement, which is dispositive of all issues herein, is approved and the Complaint is hereby ordered to be dismissed with prejudice to refiling.

Joseph E. McGuire
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 1999, I have served copies of the foregoing Final Decision and Order on the following persons at the addresses shown, in the manner indicated:

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